IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 726 of 2006(J)

PETITIONER:

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1. THE PRINCIPAL,
   ST.BERCHAMANS COLLEGE, CHANGANACHERRY.

2. DR.P.ANTONY, LECTURER
   DEPARTMENT OF MALAYALAM,
   ST.BERCHMANS COLLEGE, CHANAGANACHERRY.

3. FR.REJI.P.KURIAN, LECTURER,
   DEPARTMENT OF MALAYALAM,
   ST.BERCHMANS COLLEGE, CHANGANACHERRY.

4. SOJI JOSEPH, LECTURER,
   DEPARTMENT OF PHYSICAL EDUCATION,
   ST.BERCHMANS COLLEGE, CHANGANACHERRY.

5. DR.JOSE PRASAD MATHEW, LECTURER,
   DEPARTMENT OF ZOOLOGY, ST.BERCHAMANS COLLEGE,
   CHANGANCHERRY.

6. RENJITH THOMAS, LECTRER,
   DEPARTMENT OF CHEMISTRY, ST.BERCHAMNS COLLEGE,
   CHANGANACHERRY.

BY ADV. SRI.BABY ISSAC ILLICKAL
SRI.THOMAS JAMES MUNDACKAL

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS
   CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF COLLEGIATE EDUCATION,
   VIKAS BHAVAN THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF COLLEGIATE
   EDUCATION, KOTTAYAM.

4. MAHATMA GANDHI UNIVERSITY REPRESENTED
BY ITS REGISTRAR, KOTTAYAM.

R1 TO 3 BY G.P. SRI.G.SURARSHAN
R4 BY ADV.SRI.V.A.MUHAMMED, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: PHOTOCOPY OF THE PRO FORMA OF THE DIRECT PAYMENT AGREEMENT.

P2: PHOTOCOPY OF THE JUDGMENT DT.29.6.2004 IN WPC NO.18975/2004.

P3(a): PHOTOCOPY OF THE APPOINTMENT ORDER OF 2ND PETITIONER DT.2.8.2004.

P3(b): .DO. 3RD PETITIONER DT.2.8.2004.

P3(c): .DO. 4TH PETITIONER DT.2.8.2004.

P3(d): .DO. 5TH PETITIONER DT.2.8.2004.

P3(e): .DO. 6TH PETITIONER DT.2.8.2004.

P4: PHOTOCOPY OF ORDER OF R4 DT.16.7.2005.

P5: PHOTOCOPY OF REJECTION ORDER DT.30.11.2005 ISSUED BY R3.

P6: PHOTOCOPY OF SALARY APPROVAL GIVEN TO A TEACHER BY R3 DT.5.8.2005.

P7: PHOTOCOPY OF JUDGMENT DT.3.2.2006 IN WPC NO.22455/2005.

P8: PHOTOCOPY OF APPROVAL OF THE APPOINTMENT OF SRI.MADHUSUDHAN DT.10.3.2005.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.726 of 2006

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Dated this the 20th day of December, 2006.

JUDGMENT

Petitioners 2 to 6 are lecturers appointed in various Departments by the first respondent-College. The appointments were said to be initially made as Guest Lecturers pending approval by the University. It is stated that the University granted approval on 16.7.2005. However, Government has not released salary to the Lecturers on the ground that prior approval of the Government was not obtained which is required after the amendment to the University Act in the year 2005. The amendment to the University Act providing for prior approval from the Government sanctioning post is not under challenge. Since salary is paid by the Government to the teaching staff in the aided colleges, Government is certainly the authority to approve or disapprove appointment. Petitioner's case is that appointments were made prior to the coming into force of the amendment to the Act. However, Government Pleader has reported that University has granted approval on 16.7.2005 which is after the amendment. The University is bound by the statute and it cannot grant approval against it. This court directed the management to file a statement as to whether appointments were against retirement vacancies. The statement filed in this court shows that petitioners 2 to 6 were appointed against retirement vacancies and if that be so, sanctioning of fresh post may not be required. In any case I uphold the authority of the Government to

approve or disapprove appointments to any aided college as liability is on the Government to pay salary and other benefits to the staff. Of course Government should not arbitrarily decline to approve appointments, more so, when management wants to fill up vacancies arising on account of retirement. The student-teaching staff ration has to be always kept in mind while making substitutes or fresh appointments. The W.P. is therefore disposed of with direction to the first respondent to take decision in the case of petitioners 2 to 6 within a period of one month from the date of production of copy of this judgment. If after verifying the management's records on strength of students and teachers the Government decides to refuse approval for any anybody's appointment, they should issue notice and hear their version.

C.N.RAMACHANDRAN NAIR
Judge

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